



Supreme Prosecutors Office News Release

Released on: September 16, 2011

Released by: Special Investigation Division

Prosecutor General Huang Shi-ming, after a joint consultation with the Taiwan High Prosecutors Office, Taiwan Taipei District Prosecutors Office, and prosecutors of the Special Investigation Division, concludes that the first appellate judgment of the Taiwan High Court in the “discretionary state affairs fund case”, and the first instance judgment of the Taiwan Taipei District Court in the “secret diplomacy case” are contrary to law in their findings of fact and applications of law in many aspects. Prosecutor General Huang has resolved to appeal against these judgments, and appeals have accordingly been lodged with the Supreme Court and the Taiwan High Court on September 16, 2011. The gists of the appeals are summarized below:

1. Discretionary state affairs fund case:

Based on testimonies of other defendants in the same case, including Chen Zhen-hui, Ma Yong-chen and Lin De-xun, as well as relevant interpretory letters of the President’s Office, the discretionary state affairs fund is “party-specific”, “account-specific” and “book-specific” in nature with separate accounts. There is no possibility of confusion and the so-called “big reservoir theory” does not apply.

The defendants Chen Shui-bian, Wu Shu-chen, Ma Yong-chen, Lin De-xun and Chen Zhen-hui have used 747 invoices from personal consumer transactions by other people to claim on the discretionary state affairs fund. Investigations show that these claims, totalling NT\$19,124,078, were in fact used on the Yushan Residence and on general personal expenses of the defendants Chen Shui-bian, Wu Shu-chen, and their family members Chen Chih-chung, Huang Jui-ching, Chen Hsing-yu and Chao Chien-ming, as clearly testified by Chen Zhen-hui, another defendant in the same case. Such acts naturally constituted the offense of misappropriation of public property.

The Budget Act and Account Settlement Act expressly provide that governmental budgets cannot be used on a cross-year basis, unless they have been preserved according to statutory procedures. One can even presume that they cannot be used on a cross-term basis. In general a head of state would use up all of the budgets within his term, either within the year or within the term, so as to demonstrate his achievements of the year or the term. The original judgment has failed to ascertain the relevant statutory requirements and administrative customs, and has instead directly found that when re-election of the defendant Chen Shui-bian as President was confirmed on March 30, 2004, the unused balance of the discretionary state affairs fund of

NT\$20,764,880 had been transferred for use on his second term. This was unreasonable, and also contrary to principles of experience and legal reason.

The original judgment held that of Chen Shui-bian's 21 secret diplomacy or charitable reward or gift expenses, 12 of these expenses did not relate to secret diplomacy; while the other 9 items were secret diplomacy expenses, they could have been examined and written off by the National Audit Office by means of confidential official letters under "Project 00". It was not necessary for the defendants Chen Shui-bian, Wu Shu-chen, Ma Yong-chen, Lin De-xun and Chen Zhen-hui to collect the discretionary state affairs fund via such illegal means as untruthful reward lists, collection of personal invoices and other conduct constituting forgery of documents. Based on testimonies of witnesses Gu Zhong-liang, Chen Xin-yi, Chen Zhen-hui and Hao Guang-cai, one is able to conclude that the payments for the aforementioned 21 secret diplomacy or charitable reward or gift expenses also did not come from the discretionary state affairs fund. The original judgment had failed to investigate and ascertain whether the aforementioned 21 expenses were paid for from other sources, and instead had merely concluded that the offense of corruption was not constituted, by virtue of the total of the aforementioned 21 expenses already exceeded the amount of misappropriation and fraud alleged by the prosecutors. Clearly the Court had erred in this regard.

Further, the defendants Lin De-xun and Ma Yong-chen had defrauded more than NT\$30 million from the discretionary state affairs fund, using untruthful reward lists and invoices belonging to others; their offenses were not "slight" as found by the judgment and could be subject to mitigated sentences. In addition, the offense for which the defendant Ma Yong-chen was indicted was statutorily not eligible for a suspended sentence; but the original judgment had declared a suspended sentence on the ground that "the prosecutors have also requested for a declaration of suspended sentence". Such declaration was obviously contrary to law.

2. Joint profiteering by defendants Wu Shu-chen, Cai Ming-che and Guo Quan-qing (regarding the offense of corruption involving the Nangang Exhibition Hall):

When Yu Zheng-xian, the defendant in a separate case, leaked the confidential information, he had first requested the non-public official defendant in another case, Hong Chong-xin, to act as contact person, and had selected a private location unrelated to either his office or his residence to enable the defendant Cai Ming-che to transcribe the list of evaluation committee members. He then later requested the unknowing Chen Hong-yi to pass on a sealed envelope. This is evidence that Yu Zhen-xian, the defendant in a separate case, was well aware that leakage of the list of evaluation committee members and delivering documents containing information about bidder qualifications were major and serious legal violations, involving major interests. In light of his background and his wealth of political experience, it is obvious that he would also have some knowledge that the defendant Wu Shu-chen may receive benefits from other parties as a result. Therefore, even if he had not proactively and explicitly

conspired with the defendant Wu Shu-chen beforehand, he had also acted in consistency with her intentions through his implicit communication of illegal intentions; he should therefore be sanctioned for the offense of acceptance of bribe in violation of official duties jointly with the defendant Wu Shu-chen.

The defendant Wu Shu-chen was the First Lady, and had abused her substantive influence on public officials by instructing Yu Zhen-xian to leak the list of evaluation committee members and documentation regarding qualifications and restrictions of bidders to Li Tuo Company, thereby assisting Li Tuo Company to become the winning contractor for construction of the Nangang Exhibition Hall and receiving an enormous personal gain. Her conduct has severely and deeply damaged the reputation and credit of the State and the Government as well as legal order, and to date she continues to deny having committed the offense, demonstrating a poor attitude after the offense. The original judgment has clearly been too lenient, in not ordering the maximum penalty with term imprisonment and fine or imposing a heavier sentence pursuant to Article 58 of the Criminal Code; such leniency is contrary to the principle of “proportionality of offense and sentence”.

3. With regards to money laundering by defendants Chen Shui-bian, Wu Shu-chen, Chen Zhen-hui, Cai Ming-che, Guo Quan-qing, Chen Chih-chung and Huang Jui-ching:

The defendant Cai Ming-che had received a portion of the bribe for the “Longtan land purchase case”, in the amount of US\$2,380,000, and had made layered remittances via numerous overseas accounts. Objectively he was clearly intending to use “layered remittances” to impede or interfere with the judicial authorities’ investigation and prosecution of the aforementioned serious criminal proceeds, which is consistent with the usual mode of operation for money laundering and constitutes the offense of money laundering.

With regards to money laundering by the defendants Chen Shui-bian and Wu Shu-chen of more than US\$1,910,000, the defendant Chen Shui-bian argues in his defense that said amount was used as a donation account for promotion of Taiwan’s diplomatic affairs. If he were indeed making preparations for engagement in diplomatic affairs after his retirement from office, why was said account settled and closed on February 29, 2008, immediately after a remittance was made from said account on February 22 of the same year to the account provided by Wu Li-pei, the defendant in a separate case, and was no longer available for receiving future donations? Based on the testimony of Yeh Ling-ling, the witness in a separate case, the defendant Wu Shu-chen had insisted that she owned these funds at the time that she opened the account, and opening of the trust account was for the purpose of leaving money to her son and daughter, the defendants Chen Chih-chung and Chen Hsing-yu. Clearly the defendant Chen Shui-bian’s defense argument of the money being used for diplomatic purposes was fabricated and without merit.

The defendants Chen Chih-chung and Huang Jui-ching are the ultimate beneficiaries of a

money laundering account containing the enormous sum of approximately US\$21,000,000, but the sentence imposed on these two defendants by the original judgment was in fact even lighter than that imposed on co-defendants Wu Jing-mao and Chen Jun-ying. Clearly this is contrary to the principle of proportionality of offense and sentence. The original judgment had granted the defendant Huang Jui-ching the mercy of a suspended sentence, merely on the ground of her “oral undertaking to give for public welfare” and the condition of her paying NT\$10 million to the Treasury; this part of the judgment is clearly disproportionate to the criminal gains she received.

4. “Secret diplomacy case” involving Chiu I-jen & others

The defendants Chiu I-jen and Kao Ying-mao had violated Article 2 of the “Important Matters Governing Examination of Ministry of Foreign Affairs secret fund and Procedures for Preservation of Vouchers Not Submitted for Examination”. They took advantage of a loophole in instalment payments under “Project 00” by first exercising their powers to have the payments originally resolved by the National Security Meeting to be made be issued as open traveler’s checks, which were then directly used for the payment; they then violated the normal procedure requiring that a secret diplomacy payment must be witnessed by other people, in order to verify that a payment has actually been made and there is clear evidence of the payment. The defendant Chiu I-jen had signed for receipt of the aforementioned traveler’s checks without any third party witness, showing that the two defendants had intentionally attempted to violate the usual secret diplomacy fund payment procedures in order to evade future examination, and to obtain an illegal benefit.

Further, the English receipt for the 4th instalment under “Project 00” of the large sum of US\$500,000 was signed so carelessly that it was impossible to identify the person who had signed it. When compared with personnel from “00 Party” who had signed for the 3rd instalment, a naked-eye observation of the two signatures indicate that they differed in pen movements, turns and raises; in particular, the pen movement from the beginning to the end of a stroke and the general writing habit are obviously different. The original judgment was obviously too hasty in finding that the two signatures were extremely similar.

The defendant Chiu I-jen argued in his defense that the 4th instalment of US\$500,000 traveler’s checks under “Project 00” had already been delivered to the witness Ko Cheng-heng, to be passed on to personnel from Party 00. However, the witness Ko Cheng-heng has denied this claim, whether during the investigations or the several examinations during the hearings. Given that there is no other positive evidence to prove Chiu I-jen’s claim, the original judgment’s direct acceptance of his defense clearly constituted a judgment without reason.

Traveler’s checks are always numbered, so that one is able to ascertain who had presented

them for payment and where. As the defendants were aware that these were criminal proceeds, it was natural that they would not personally cash in the traveler's checks, so as to evade prosecution. Further, whether some of the traveler's checks were presented for payment in Country 00 and whether the payment was delivered to relevant persons of Country 00 are two different matters. In relying on these facts for a not guilty judgment, the original judgment has violated the principles of experience and legal reasoning.

The original judgment also held that the status of the ROC delegation to 000 had not been undermined. However, while the title of the ROC delegation to 000 remained unchanged, all positions of delegation members as set out in the membership information, other than that of the Permanent Representative and Deputy Permanent Representative, had been deleted (such as Advisor, First Secretary, Second Secretary and Third Secretary). Clearly the original judgment had erred in its finding in this regard.